

February 17, 2004

The Honorable Maura D. Corrigan
Chief Justice, Michigan Supreme Court
Cadillac Place, Suite 8-500
3034 W. Grand Boulevard
Detroit, MI 48202-6034

RE: First Report of the Case Management Work Group

Dear Chief Justice Corrigan:

On behalf of the Case Management Work Group, I am pleased to submit our First Report. As you can see, this First Report addresses the direction contained in the Supreme Court's Administrative Order No. 2003-6 of November 4, 2003, which was to "develop a plan for the management of civil cases that includes 'just in time' briefing." We amplified this direction in our November 19, 2003 letter that established the Case Management Work Group. In that letter, we generally asked the Work Group to (1) consider the types of "just-in-time" briefing techniques that the Court of Appeals might utilize (2) consider the types of differentiated case management techniques that the Court of Appeals might utilize, and (3) collect certain data relating to the time consumed in the Intake phase of the Court of Appeals processing.

The Work Group has held three formal meetings and has circulated extensive materials for its members to consider. We have captioned this initial response as our "First Report" because we contemplate further intensive study of a number of areas that we have summarized but upon which we have not made direct recommendations. We have, however, reached unanimous agreement on two broad, basic recommendations.

First, we do not recommend that "just-in-time" briefing be implemented by the Court of Appeals. We have reached this position for two reasons: (1) the Court of Appeals does not have the staff necessary to implement "just-in-time" briefing on a comprehensive and orderly basis and (2) implementation of "just-in-time" briefing will not achieve significant delay reduction.

Second, we do recommend that the Supreme Court issue an Administrative Order that will order the expeditious processing of appeals from trial courts' grants or denials of motions for summary disposition. Our proposed timeline contemplates that disposition of such appeals will occur within approximately 180 days of filing with the Court of Appeals. Since appeals from summary disposition make up nearly 50% of the Court of Appeals' non-priority civil cases, "fast-tracking" these cases will likely achieve substantial delay reduction; indeed, assuming that the average disposition for these appeals will, under the summary disposition track that we recommend, be approximately 182 days, the delay reduction will be approximately 70 days. As you can see, we

have prepared a draft Administrative Order for the Supreme Court's consideration that will implement this proposal.

I should note, however, that there are modifications of our summary disposition track proposal relating to record and transcript production that we will study further over the next several months. One possible modification would require that the lower court's order granting or denying summary disposition must contain either a waiver of the transcript or a statement that the transcript is attached to the order. A second possible modification would modify MCR 7.204 to allow a claim of appeal to be filed twenty-one days after either (1) entry of the final order or (2) the timely filing of the transcript that was ordered within 21 days of the final order whichever is later. Chief Judge Peter Maceroni and Judge Michael Talbot will be discussing these proposals with the board of the Michigan Judges Association shortly. If either of these two approaches appears to be feasible, we will promptly notify the Supreme Court.

I should also mention that I have discussed the transcript issue with Chief Judge Pro Tem Smolenski of our Court; as you know, Chief Judge Pro Tem Smolenski is the chair of the Record Production Work Group that you and I jointly appointed. Chief Judge Pro Tem Smolenski convened a meeting of the Record Production Work Group at which I outlined a proposal for a special \$3.00 per page rate for transcripts, rather than the current statutory rate of \$1.75 per page, that are timely filed in connection with the summary disposition track. We believe that experimenting with an incentive approach that allows this higher page rate in circumstances in which the court reporter files the transcripts before or on the filing deadline—that is, within 28 days of its being ordered—but that would continue the current page rate for transcripts filed after the filing deadline makes a great deal of sense. We will be submitting a memorandum of law addressing the question of whether the Supreme Court possesses the authority to order such an approach, but I should note that I have discussed the matter with several legislators who have stated that they would be happy to sponsor legislation authorizing such a charge if the answer to that question is unclear.

With respect to the summary disposition track proposal, I should also emphasize that the Work Group views this as a pilot program, in essence a trial run; the Administrative Order would therefore sunset one year after its effective date. Thereafter, if the proposal has proven to be a success, the Supreme Court can make it permanent. If the proposal has not achieved the results that we contemplate, the Supreme Court can modify or discontinue it.

Thank you for the opportunity to work on this important matter and the Work Group is available at any time to discuss all or any part of the material in this First Report with you and the other Justices of the Supreme Court. In this regard, it is our hope that we will be able to discuss the summary disposition track proposal in some detail at the upcoming Bench/Bar Conference.

Sincerely,

William C. Whitbeck
Chief Judge, Court of Appeals

Dp/WCW
cc: Justices, Michigan Supreme Court

Hon. Maura D. Corrigan

February 3, 2004

Page 3

Judges, Michigan Court of Appeals

Members, Case Management Work Group

Attachments